

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 1, 2004

In Reply Refer To:
AES Ironwood, LLC
Docket Nos. ER04-1010-000
ER04-1010-001
ER01-1315-002

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Dear Mr. Loeffler

1. On July 12, 2004, as amended on August 31, 2004, AES Ironwood, LLC (Ironwood) filed an updated market power analysis including generation market power screens in compliance with the Commission's order issued on May 13, 2004.¹ Ironwood also submitted revised tariff sheets incorporating into its market-based rate tariff the Commission's market behavior rules,² and reflecting changed corporate affiliations and removing an ancillary service market. Ironwood's submittal is accepted for filing. The revised tariff sheets are accepted for filing, effective September 11, 2004. As discussed below, we conclude that Ironwood satisfies the Commission's standards for market-based rate authority.

2. Ironwood is a Delaware limited liability corporation, located in South Lebanon Township, Lebanon County, New Jersey. Ironwood owns and operates a gas-fired plant with a total output of 778 MW in PJM Interconnection, LLC (PJM). Ironwood states that

¹ *Acadia Power Partners, LLC, et al.*, 107 FERC ¶ 61,168 (2004). The Commission granted Ironwood market-based rate authority in *AES Ironwood, LLC*, Docket No. ER01-1315-000 (June 5, 2000) (unpublished letter order).

² *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004). Consistent with the terms of the market behavior rules order, these revised tariff sheets are effective December 17, 2003.

the construction of the Ironwood facility began on approximately June 15, 1999. The Commission granted Ironwood market-based rate authorization to sell energy, capacity, and ancillary services at market-based rates in 2001. Ironwood is affiliated, through common ownership, with various companies which own or operate electric generating or transmission facilities. AES Corporation (AES), Ironwood's parent company, owns or has an interest in approximately 114 facilities in some 27 countries, including the United States. AES currently owns generation in California, Connecticut, Hawaii, Indiana, Maryland, New Hampshire, New Jersey, New York, Oklahoma, Pennsylvania, and Texas. The Commission has previously granted market-based rate authority for AES affiliates of Ironwood nationwide.

3. Ironwood reports the following changes in status: (1) AES sold CILCORP, Inc. (the parent company of Central Illinois Light Company (CILCO)) to Ameren Corporation on January 31, 2003, and the Commission approved the sale on November 21, 2002; (2) Ironwood is no longer affiliated with AES NewEnergy, Inc. (AES NewEnergy), a power marketer, because AES sold AES NewEnergy to Constellation Energy Group, Inc., and the Commission approved the disposition of jurisdictional assets on July 26, 2002; (3) AES Power, Inc. (AES Power), a power marketer affiliated with Ironwood, notified the Commission of the cancellation of its market-based rate tariff on May 21, 2004 and the Commission accepted the notice of cancellation for filing, effective May 22, 2004; and (4) AES Red Oak, LLC (Red Oak) began constructing an 818 MW combined cycle electric generating facility located in the State of New Jersey on June 18, 1999, and the Commission granted authority to Red Oak to sell energy, capacity, and ancillary services on August 10, 2001.

4. Ironwood states that none of the changes in status referenced above has affected Ironwood's lack of market power since its initial grant of market-based rate authority.

Procedural Matters

5. Notice of Ironwood's filing was published in the *Federal Register*, 69 Fed. Reg. 55,423 (2004), with comments, protests and interventions due on or before September 21, 2004. None was filed.

Discussion

6. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers

whether there is evidence of affiliate abuse or reciprocal dealing.³ As discussed below, we conclude that Ironwood satisfies the Commission's standard for market-based rate authority.

7. In its order issued in *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. Section 35.27(a) of the Commission's regulations provides that applicants shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.⁴ If an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market power concerns.⁵

8. Ironwood notes that construction on Ironwood and construction on Red Oak, an 818 MW gas-fired combined cycle electric generating facility owned by AES, commenced after July 9, 1996, thus they both meet the section 35.27(a) exemption. However, since Beaver Valley and Warrior Run, two qualifying facilities owned by AES, are both pre-1996 units, AES studied whether the new Ironwood and Red Oak capacity, when added to existing capacity, raises generation market power concerns. Ironwood has provided a generation market power analysis using the PJM Interconnection, LLC (PJM) as the relevant geographic market. Ironwood states that it passes both indicative screens in that market. The Commission has reviewed Ironwood's analysis and finds that Ironwood passes the pivotal supplier screen and the market share screen for each of the four seasons considered. The Commission finds that Ironwood satisfies the Commission's generation market power standard for the grant of market-based rate authority.

9. When an affiliate of a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an OATT on file before granting such authorization. Ironwood states that Ironwood does not own or control any transmission facilities other than certain limited interconnection facilities, none of which

³ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996), *Letter Order Approving Settlement*, 79 FERC ¶ 61,149 (1997); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord Heartland Energy Services, Inc., et al.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

⁴ 18 C.F.R. §35.27(a) (2004).

⁵ *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

could be used by another party to effectuate sales of electric energy, capacity, or ancillary services at wholesale. Ironwood further states that its parent company, AES, owns Indianapolis Power & Light Company (IP&L). IP&L is a public utility which owns jurisdictional transmission facilities in Indiana, not in PJM where Ironwood is located. Ironwood states that IP&L is a transmission-owning member of the Midwest Independent Transmission System Operator, Inc. (MISO). In 2001, the Commission approved the transfer of functional control over IP&L's transmission system to the MISO.⁶ Ironwood states that transmission service provided over IP&L's transmission system is provided pursuant to the terms of the MISO OATT and IP&L no longer functions as a "provider" of open access transmission service. Accordingly, The Commission finds that Ironwood satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

10. Ironwood states that neither it nor its affiliates are able to erect barriers to entry because they do not own or control (other than for their own uses) raw materials, fuels, emissions allowances, or other inputs needed to build or operate electric production, distribution or transmission facilities. Ironwood further states that they do not own or control any natural gas distribution facilities or natural gas pipelines, whether intrastate, "Hinshawed," or subject to the jurisdiction of the Commission and cannot foreclose competitors' procurement of fuel. Based on Ironwood's representations, we are satisfied that neither Ironwood nor its affiliates can erect barriers to entry.

11. Ironwood states that there continues to be no likelihood of affiliate abuse with respect to Ironwood or its affiliates. Ironwood's rate schedule and code of conduct as accepted for filing by the Commission specifically prohibit transactions between Ironwood and IP&L or any affiliate of Ironwood having a franchised electric service area. The Commission finds that Ironwood satisfies the Commission's concerns with regard to affiliate abuse.

12. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or

⁶ *Midwest Independent Transmission System Operator, Inc.*, 97 FERC ¶ 61,326 (2001).

greater) market-based power sales during the most recent calendar quarter.⁷ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁸

13. With regard to reporting changes in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing, in a Notice of Proposed Rulemaking in Docket No. RM04-14-000, the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates.⁹ Accordingly, the change in status reporting obligation for Ironwood is subject to the outcome of the rulemaking.

14. Ironwood is directed to file an updated market analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

By direction of the Commission.

Linda Mitry,
Deputy Secretary.

⁷ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/Electric/eqr/eqr.htm>.

⁸ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

⁹ *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004).